

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IVAN RUIZ-RIVERA,

Plaintiff,

v.

CITY AND COUNTY OF LANCASTER;
POLICE OFFICER JACOB BINGHAM
#316; POLICE OFFICER LAPP (Badge
Number Unknown); FICTITIOUS
DESIGNATION – JOHN DOES (#1-25);
and FICTITIOUS DESIGNATION – ABC
CORPORATIONS (#1-25),

Defendants.

CIVIL ACTION NO. 21-2105

ORDER

AND NOW, this 9th day of September, 2021, after considering the amended complaint filed by the plaintiff (Doc. No. 2), the defendants' motion to partially dismiss the amended complaint (Doc. No. 5), and the plaintiff's response in opposition to the motion to dismiss (Doc. No. 6); and for the reasons set forth in the separately filed memorandum opinion, it is hereby **ORDERED** as follows:

1. The defendants' motion to partially dismiss is **GRANTED IN PART** and **DENIED IN PART** as follows:

a. The motion is **GRANTED** insofar as the defendants seek to have the court dismiss with prejudice the causes of action for due process violations in counts II and V of the amended complaint. Counts II and V of the amended complaint are **DISMISSED WITH PREJUDICE**;

b. The motion is **GRANTED** insofar as the defendants seek to have the court dismiss with prejudice any cause of action for monetary damages based on a violation of

the Pennsylvania Constitution. Any claim for monetary damages based on a violation of the Pennsylvania Constitution are **STRICKEN WITH PREJUDICE** from the amended complaint;

c. The motion is **GRANTED** insofar as the defendants seek to have the court dismiss the plaintiff's conspiracy claim in count IV of the amended complaint. Count IV of the amended complaint is **DISMISSED WITHOUT PREJUDICE**;

d. The motion is **GRANTED** insofar as the defendants seek to have the court dismiss any state-law claims for negligent infliction of emotional distress in counts VIII and IX of the amended complaint. Any claims for negligent infliction of emotional distress in counts VIII and IX of the amended complaint are **DISMISSED WITH PREJUDICE**;

e. The motion is **GRANTED** insofar as the defendants seek to have the court dismiss any state-law claims for assault, battery, or trespass that the plaintiff asserts against the City of Lancaster in Count IX of the amended complaint. The plaintiff's state-law claims for assault, battery, and trespass, as asserted against the City of Lancaster in the amended complaint are **DISMISSED WITH PREJUDICE**;

f. The motion is **GRANTED** insofar as the defendants seek to have the court dismiss any references to the Fifth Amendment or "equal protection" in the amended complaint. Any references to the Fifth Amendment or "equal protection" in the amended complaint are **DISMISSED WITHOUT PREJUDICE**;

g. The motion is **GRANTED** insofar as the defendants seek to have the court dismiss the state-law claims for assault and battery in Count IX of the amended complaint because those claims are also included in Count VI of the amended complaint. The state-law causes of action for assault and battery asserted against Officer Bingham, Officer Lapp,

and the John Doe Officers in Count IX of the amended complaint are **DISMISSED** as duplicative of the claims in Count VI;

h. The motion is **DENIED** insofar as the defendants seek to have the court dismiss the plaintiff's state-law claims for assault, battery, and trespass against Officer Bingham, Officer Lapp, and the John Doe Officers;

i. The motion is **DENIED** insofar as the defendants seek to have the court strike any references to declaratory or injunctive relief in the amended complaint; and

j. The motion is **DENIED** insofar as the defendants seek to have the court strike any references to the First Amendment in the amended complaint; and

2. The court **GRANTS** the plaintiff leave to file a second amended complaint. The court will establish a deadline for the plaintiff to file a second amended complaint in a separate order.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.